

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ALIZA ELIAZAROV,

Plaintiff,

- against -

GATEHOUSE MEDIA, LLC,

Defendant.

Docket No. 17-cv-3460

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Aliza Eliazarov (“Eliazarov” or “Plaintiff”), by and through her undersigned counsel, as and for her Complaint against Defendant Gatehouse Media, LLC (“Gatehouse” or “Defendant”) hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for copyright infringement under Section 501 of the Copyright Act. This action arises out of Defendant’s unauthorized reproduction and public display of nine (9) copyrighted photographs of wasted food found in dumpsters from restaurants around New York City, owned and registered by Eliazarov, a New York City-based photojournalist. Accordingly, Eliazarov seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

JURISDICTION AND VENUE

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over Defendant because Defendant resides in and/or is doing business in New York.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

PARTIES

5. Eliazarov is a professional photojournalist in the business of licensing her photographs to online, print, and television media outlets for a fee, having a usual place of business at 93 Greenpoint Avenue, Apt. 13, Brooklyn, New York 11222. Eliazarov's photographs have appeared in many publications around the United States.

6. Upon information and belief, Gatehouse is a limited liability company duly organized and existing under the laws of the State of Delaware, with a place of business at 175 Sully's Trail, 3rd Floor, Pittsford, New York 14534. Upon information and belief, Gatehouse is registered with the New York Department of State, Division of Corporations to do business in the State of New York. At all times material hereto, Gatehouse has owned and operated websites at the following URLs: www.enterpriseneews.com, www.eveningtribune.com, www.newsherald.com, www.nwfdailynews.com, www.capecodtimes.com, www.patriotledger.com (the "Websites").

STATEMENT OF FACTS

A. Background and Plaintiff's Ownership of the Photographs

7. On March 1, 2016, Eliazarov photographed several wasted food items (the "Photographs"). A true and correct copy of the Photographs is attached hereto as Exhibit A.

8. Eliazarov then licensed the Photographs to Business Insider. On July 15, 2016, Business Insider ran an article that featured the Photographs on its web edition entitled, *This photographer takes beautiful photos of wasted food to highlight a major issue in America*. See

<http://www.businessinsider.com/wasted-food-turned-to-beautiful-photos-2016-7/#as-a-person-who-communicates-visually-through-photographs-it-was-most-important-for-me-to-show-the-beauty-in-food-that-was-on-its-way-to-being-wasted-eliazarov-said-1>. Eliazarov's name was featured in a gutter credit identifying her as the photographer of the Photographs. A true and correct copy of the Photographs in the article is attached hereto as Exhibit B.

9. Eliazarov is the author of the Photographs and has at all times been the sole owner of all right, title and interest in and to the Photographs, including the copyright thereto.

10. Seven (7) Photographs were registered with the U.S. Copyright Office and were given Copyright Registration Number VA 1-996-957.

11. Two (2) Photographs were registered with the U. S. Copyright Office and were given pending Copyright Registration Number 1-5140026923. See Exhibit C.

B. Defendant's Infringing Activities

12. Upon information and belief, on or about July 15, 2016, Gatehouse ran an article on six (6) of its Websites entitled *This photographer takes beautiful photos of wasted food to highlight a major issue in America*. The articles can be found at the following URLs:

- <http://www.enterpriseneews.com/business/20160715/this-photographer-takes-beautiful-photos-of-wasted-food-to-highlight-major-issue-in-america>
- <http://www.eveningtribune.com/business/20160715/this-photographer-takes-beautiful-photos-of-wasted-food-to-highlight-major-issue-in-america>
- <http://www.newsherald.com/business/20160715/this-photographer-takes-beautiful-photos-of-wasted-food-to-highlight-major-issue-in-america>

- <http://www.nwfdailynews.com/business/20160715/this-photographer-takes-beautiful-photos-of-wasted-food-to-highlight-major-issue-in-america>
- <http://www.capecodtimes.com/business/20160715/this-photographer-takes-beautiful-photos-of-wasted-food-to-highlight-major-issue-in-america>
- <http://www.patriotledger.com/business/20160715/this-photographer-takes-beautiful-photos-of-wasted-food-to-highlight-major-issue-in-america>.

The articles prominently featured the Photographs. True and correct copies of the article on each of the Websites are attached hereto as Exhibit D.

13. Gatehouse did not license the Photographs from Plaintiff for its article, nor did Gatehouse have Plaintiff's permission or consent to publish the Photographs on its Websites.

CLAIM FOR RELIEF
(COPYRIGHT INFRINGEMENT AGAINST GATEHOUSE)
(17 U.S.C. §§ 106, 501)

14. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-13 above.

15. Gatehouse infringed Plaintiff's copyright in the Photographs by reproducing and publicly displaying the Photographs on its Websites. Gatehouse is not, and has never been, licensed or otherwise authorized to reproduce, publicly display, distribute and/or use the Photographs.

16. The acts of Defendant complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

17. Upon information and belief, the aforementioned acts of infringement by Gatehouse have been willful, intentional, and purposeful, in disregard of and with indifference to Plaintiff's rights.

18. As a result of Defendant's infringement of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to recover her damages and Defendant's profits pursuant to 17 U.S.C. § 504(b).

19. Defendant's conduct, described above, is causing and, unless enjoined and restrained by this Court, will continue to cause Plaintiff irreparable injury that cannot be fully compensated by or measured in money damages. Plaintiff has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant Gatehouse be adjudged to have infringed upon Plaintiff's copyrights in the Photographs in violation of 17 U.S.C §§ 106 and 501;
2. That Plaintiff be awarded Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Photographs;
3. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;
4. That Plaintiff be awarded pre-judgment interest; and
5. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Valley Stream, New York
June 8, 2017

LIEBOWITZ LAW FIRM, PLLC

By: /s/ Kamanta C. Kettle
Kamanta C. Kettle

Kamanta C. Kettle
11 Sunrise Plaza, Suite 305
Valley Stream, New York 11580
Telephone: (516) 233-1660
KK@LiebowitzLawFirm.com

Attorneys for Plaintiff Aliza Eliazarov